

In the Matter of Merchant Mariner's Document No. Z-369398-D2 and
all other Licenses, Certificates and Documents
Issued to: HENRY C. BATES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

819

HENRY C. BATES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 6 May 1955, an Examiner of the United States Coast Guard at Houston, Texas, revoked Merchant Mariner's Document No. Z-369398-D2 issued to Henry C. Bates upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as Chief Pumpman on board the American SS AEOLUS under authority of the document above described, on or about 18 and 19 January 1955, while said vessel was in the port of Yokosuka, Japan, he failed to perform his regular duties by reason of being under the influence of liquor; on or about 20 January 1955, while said vessel was in the port of Yokohama, Japan, he failed to perform his regular duties by reason of being under the influence of liquor; on or about 1 March 1955, while said vessel was at Sasebo, Japan, he abandoned his watch station at 0200 without proper authority; on or about 2 and 3 March 1955, while said vessel was at sea, he failed to perform his regular duties; on or about 25 April 1955, while said vessel was in the port of Houston, Texas, he assaulted and battered a U. S. Customs employee, Lynn Navarre, who was engaged in the performance of his official duties.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection. He entered a plea of "guilty" to the First Specification and a plea of "not guilty" to the other four specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of entries in the Official Logbook of the AEOLUS pertaining to the first four specifications. Inspector Navarre and another Customs Inspector testified concerning the Fifth Specification alleging assault and battery upon Inspector Navarre.

In defense, Appellant testified in his behalf. He stated that he was intoxicated and had no recollection of the alleged assault and battery. Appellant also stated that he left his station on 1 March 1955 because the Second Mate said there would not be any pumping for five hours.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea to the First Specification and proved by proof of the other four specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-369398-D2 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that except as to the specification to which Appellant plead "guilty," the four specifications supported solely by the log entries are not supported by substantial evidence because Appellant did not have an opportunity to cross-examine the persons responsible for these entries and Appellant submitted positive testimony that he did not commit these alleged offenses. With respect to the assault and battery, Appellant admits that he committed an unprovoked attack but contends that he did not know what he was doing because he was extremely intoxicated; Appellant voluntarily paid a \$500 civil penalty assessed against him by the Collector of Customs; Appellant is still confronted with a Federal Court charge; there has been no blemish on Appellant's record since 1946; and Appellant has been deprived of his livelihood. In conclusion, it is respectfully submitted that the above factors and Appellant's condition at the time of the assault should cause the order of revocation to be mitigated to conform with the circumstances.

APPEARANCES: Bliss Daffan, Esquire, of Houston, Texas, of counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage including all dates between 17 January 1955 and 26 April 1955, Appellant was serving as Chief Pumpman on board the American SS AEOLUS and acting under authority of his Merchant Mariner's Document No. Z-369398-D2.

While the ship was at Yokohama, Japan, on 18, 19 and 20 January 1955, Appellant was absent from his station and duties between the hours of 0800 and 1700. The reason for this failure to perform his duties was that Appellant was under the influence of liquor.

While the ship was at Sasebo, Japan, on 1 March 1955, Appellant walked off the deck without permission at about 0200 and left the cargo pumps running. The Engineer on watch turned the pumps off from below.

On 2 and 3 March 1955 while the ship was at sea, Appellant was absent from his duties without leave from 0800 to 1700.

At about 1500 on 25 April 1955 while the ship was at Houston, Texas, Appellant entered a room on the ship where Customs Inspector Navarre was sitting at a table performing his official duties. Appellant was in an intoxicated condition. He sat down and said he wanted his money. Inspector Navarre stated that he was not on board to pay off the men but to collect money. He told Appellant that the Shipping Commissioner was topside. Thereupon, Appellant struck Inspector Navarre in the face while he was wearing eye glasses. Inspector Navarre's glasses were broken and he received medical treatment at a hospital. He received a broken bone on his face and his vision was not clear at the time of the hearing more than ten days later. Also at the time of the hearing, charges against Appellant were pending in the Federal Court as a result of this incident.

Appellant's prior disciplinary record consists of three suspensions and two admonitions in the period from 1944 through 1946. These offenses were primarily failures to stand watch or otherwise failing to perform his duties.

OPINION

The entries in the Official Logbook of the AEOLUS made out a prima facie case against Appellant since these entries comply with the requirements of 46 U.S.C. 702 and, therefore, they are exceptions to the hearsay rule as records made in the regular course of business. 28 U.S.C. 1732. Those persons responsible for the log entries were not available to testify since they had sailed with the ship prior to the time of the hearing. The Examiner did not consider that the testimony of the Appellant was sufficiently credible to overcome the prima facie case. I concur with the views of the Examiner in this matter.

The circumstances surrounding the unprovoked assault and battery upon Customs Inspector Navarre show that it was a very serious offense. Inspector Navarre was not only seated at the time of the attack but he was also wearing eye glasses which were broken by the blow delivered by Appellant. Also, Inspector Navarre was acting in his official capacity as a U. S. Customs Inspector. Appellant's voluntary intoxication did not justify the commission

of this offense which was committed without the slightest excuse.

The other factors mentioned on appeal by Appellant are not considered as mitigating circumstances because the objective of these proceedings is not penal but to protect lives and property on merchant vessels of the United States. Since Appellant indicated by this unreasonable and totally unpredictable attack that he is not a safe person to be permitted to ship as a member of a crew on our merchant vessels, the order of revocation will be sustained.

ORDER

The order of the Examiner dated at Houston, Texas, on 6 May
1955 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 21st day of June, 1955.